

ESTATE OF FREDERICK ROSALES (WILLIE) JONES

IBIA 75-56

Decided November 5, 1975

Appeal from an order of an Administrative Law Judge modifying a previous order.

Reversed in Part and Remanded.

APPEARANCES: Schneider, Smythe, Salley & Van Siclen, by Michael J. Reynolds, Esq., for appellants; Barbara A. Isenhour, Attorney, for appellee Dameon Adamson, a minor.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

After a hearing held in Tacoma, Washington, on August 26, 1974, the Administrative Law Judge issued an Order Determining Heirs on September 11, 1974, wherein he found the heirs of decedent, Frederick Rosales (Willie) Jones, who died intestate on April 5, 1974, to be -

| | | | | |
|------------------------|---|----------|---|-----|
| Michelle Jones | - | daughter | - | 1/3 |
| Todd Christopher Jones | - | son | - | 1/3 |
| Jenifer Ann Jones | - | son | - | 1/3 |

Janine Adamson, through counsel, filed a petition for rehearing with the Judge on behalf of Dameon Adamson, a minor, alleging among other things -

1) That she was the mother of Dameon Adamson, born January 3, 1974, and that the father was the decedent, Frederick Rosales (Willie) Jones.

2) That the decedent acknowledged to several persons that he was the father of Dameon Adamson.

Attached to said petition were sworn affidavits from four persons wherein each stated the following -

1) That I knew the deceased * * *.

2) That I know the petitioner, JANINE ADAMSON and her son DAMEON ADAMSON.

3) That the deceased, WILLIE JONES, acknowledged to me that he was the natural father of DAMEON ADAMSON.

Todd Christopher Jones and Jenifer Ann Jones, minors, through counsel, opposed the petition for rehearing and submitted a memorandum of points and authority in opposition to the petition.

The Administrative Law Judge without ruling on the petition and without further hearing modified his previous order on February 19, 1975, concluding that his previous order of September 11, 1974, was in error and including therein as additional heirs of the decedent the following -

| | | |
|----------------|---|-----|
| Dameon Adamson | - | son |
| Brandon Oster | - | son |

The Judge stated the following in support of modification of his previous order -

The substance of the petition and documentary evidence filed in connection therewith is to the effect that the child, Dameon Adamson, born on January 3, 1974, was the child of the decedent. The transcript of proceedings held in this matter on August 26, 1974, in Tacoma, Washington, on a factual testimony basis completely affirms and supports the contention of petitioner. Additionally, the said testimony and proceedings likewise establishes the existence of an additional child of decedent, one Brandon Oster, born in August, 1973, to one Sonny Oster. Party in interest, Elaine Jones (Oyler) on behalf of decedent's minor children, Todd Christopher Jones and Jenifer Ann Jones, opposes the Petition for Rehearing and in a well-reasoned memorandum contends petitioner's failure to meet the specific statutory requirements of the State of Washington proscribed the paternity of the decedent. RCWA 11.04.081 (1967).

However, although Federal law requires the applicability of state laws of decent (sic) and distribution for admeasurement purposes in Indian trust probate matters, state laws, statutory or otherwise, are only applicable in the absence of Federal statute, regulation

or legal decision. Federal authority has elected to provide that "paternity" may be established factually by mere testimony or other evidence tending to show the paternity without resort to statutory requirements of evidence such as are required by the laws of the State of Washington. Estate of Francis Sears, IA-1397 (52565); Estate of Crawford J. Reed, 1 IBIA 326; cf. Estate of Harry Colby, 69 I.D. 113 (6/29/62).

The aforementioned minors, through counsel, filed a timely appeal to the order entered on February 19, 1975, contending in part that they were denied due process.

The Board agrees that Federal statutes, regulations and decisions relating thereto take precedence over state laws, and without more would be compelled to affirm the Judge. However, a review of the transcript discloses appellants' counsel was innocently foreclosed from pursuing the cause of the appellants with respect to the question of heirship of Dameon Adamson and Brandon Oster, when the Judge expressly concluded during the course of the hearing that he had no authority to hold Dameon Adamson and Brandon Oster as heirs of the decedent. In addition, four affidavits were submitted with the petition for rehearing wherein the affiants state the decedent acknowledged to them individually that he was the natural father of Dameon Adamson.

Due process in an administrative hearing includes a fair trial conducted in accordance with fundamental principles of fair play and applicable procedural standards established by law. Swift & Co. v. United States, C.A. 7, 1962, 308 F.2d 849.

We find that appellants were not afforded due process with respect to the question of heirship of Dameon Adamson and Brandon Oster. Accordingly, the matter should be remanded for further hearing with opportunity afforded to appellants to examine and cross-examine witnesses regarding heirship of Dameon Adamson and Brandon Oster.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the modification order of February 19, 1975, is HEREBY VACATED and the matter is REMANDED for a hearing for the purpose of determining whether or not Dameon Adamson and Brandon Oster were heirs of the decedent Frederick Rosales (Willie) Jones, and whatever else the Judge may deem appropriate, and for the issuance of an order based upon the evidence adduced therefrom.

Done at Arlington, Virginia.

Mitchell J. Sabagh
Administrative Judge

I concur:

Alexander H. Wilson
Administrative Judge